

1 GORDON SILVER  
2 MARK S. DZARNOSKI  
3 Nevada Bar No. 3398  
4 Email: [mdzarnoski@gordonsilver.com](mailto:mdzarnoski@gordonsilver.com)  
5 500 N. Rainbow Blvd., Suite 120  
6 Las Vegas, Nevada 89107  
7 Tel: (702) 796-5555  
8 Fax: (702) 369-2666  
9 Attorneys for Plaintiff/Counterdefendant HPEV, Inc., and Third-Party Defendants Timothy J.  
10 Hassett, Quentin D. Ponder, Judson W. Bibb, and Theodore H. Banzhaf  
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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

HPEV, Inc., a Nevada corporation,  
Plaintiff,  
vs.  
SPIRIT BEAR LIMITED, a Delaware  
corporation,  
Defendant.

SPIRIT BEAR LIMITED, a Delaware  
corporation, on behalf of HPEV, INC., a Nevada  
corporation,  
Third-Party Plaintiff,  
vs.  
TIMOTHY J. HASSETT, QUENTIN D.  
PONDER, JUDSON W. BIBB III, THEODORE  
H. BANZHAF, AND MARK M.  
HODOWANEC,  
Third-Party Defendants.

and  
HPEV, INC., a Nevada corporation,  
Nominal Counterdefendant.

SPIRIT BEAR LIMITED, a Delaware  
corporation,

CASE NO. 2:13-cv-01548-JAD-GWF

ORDER GRANTING STIPULATION  
TO WITHDRAW PEAK FINANCE'S  
OBJECTION TO DERIVATIVE  
ACTION SETTLEMENT; DIRECTING  
THE SETTling PARTIES TO FILE A  
PROPOSED ORDER APPROVING  
THE DERIVATIVE ACTION  
SETTLEMENT UNDER FRCP 23.1(C);  
AND VACATING HEARING

1 Counterclaimant,  
2 vs.  
3 HPEV, INC., a Nevada corporation, )  
4 Counterdefendant.  
5

6 COMES NOW (1) Plaintiff and Counterdefendant HPEV, INC (“Plaintiff”, “HPEV” or  
7 the “Company”), and Third Party Defendants Timothy J. Hassett (“Hassett”), Quentin D. Ponder  
8 (“Ponder”), Judson W. Bibb (“Bibb”), Theodore H. Banzhaf (“Banzhaf”) and Mark Hodowanec  
9 (“Hodowanec”), and together with Hassett, Ponder, Banzhaf and Bibb, collectively herein, the  
10 “Individual Defendants” or “Third-Party Defendants”), by and through counsel, Mark S.  
11 Dzarnoski, Esq., of the Law Firm of Gordon Silver; (2) Defendant Spirit Bear Limited (“Spirit  
12 Bear”), by and through counsel, Vincent J. Vitatoe, Esq., of the law firm of Marquis Aurbach  
13 Coffing; and (3) objector Peak Finance, LLC (“PEAK”) by and through counsel, Stuart J.  
14 Guber, Esq., of the Law Firm of Faruqi & Faruqi, LLP and respectfully request that:

15 A. The Court enter an Order permitting the withdrawal of PEAK’s objection to final  
16 approval of the Derivative Action Settlement Agreement (“DASA”); and

17 B. The Court determine whether to give final approval to the DASA without  
18 reference to the objection.

19 In support thereof, HPEV, the Third Party Defendants, Spirit Bear and PEAK submit the  
20 following:

21 1. Spirit Bear and HPEV are parties to that certain Securities Purchase Agreement,  
22 dated as of December 14, 2012 (the “Purchase Agreement”), pursuant to which, among other  
23 things, Spirit Bear was issued preferred stock and warrants;

24 2. A dispute arose between Spirit Bear and HPEV in connection with the Purchase  
25 Agreement and other matters involving the ongoing management and operations of HPEV (the  
26 “Spirit Bear Dispute”);

27 3. As a result of the Spirit Bear Dispute, litigation ensued, including derivative  
28 claims filed by Spirit Bear against certain directors and/or officers of HPEV, including the

1 Individual Defendants, (the "SBL Derivative Action") in HPEV, Inc. v. Spirit Bear Limited 13-  
2 cv-01548 (JAD) (GWF)(D. NEV.);

3 4. Spirit Bear, HPEV and the Third Party Defendants in the SBL Derivative Action  
4 entered into the DASA which agreement is subject to final approval of this Court;

5 5. On October 22, 2015, PEAK filed a Motion to Intervene in the SBL Derivative  
6 Action seeking, among other things, approval to file its own derivative complaint in the SBL  
7 Derivative Action;

8 6. At the November 20, 2015 fairness hearing in the SBL Derivative Action, the  
9 Court denied PEAK's Motion to Intervene;

10 7. At the November 20, 2015 fairness hearing, however, the Court did allow PEAK  
11 to formally argue its objections to the DASA and the Court ordered additional briefing on certain  
12 issues which has now been completed;

13 8. The Court has not yet ruled as to whether to approve the DASA;

14 9. On August 31, 2015, the Company received notice of a summons and complaint  
15 in the matter styled Peak Finance, LLC, Derivatively on Behalf of Nominal Defendant, HPEV,  
16 Inc. v. Hassett, et al., No. 2:15-cv-01590-GMN-CWH, filed in the United States District Court  
17 for the District of Nevada (the "Peak Finance Derivative Case");

18 10. On October 22, 2015, PEAK filed an amended complaint in the Peak Finance  
19 Derivative Case.

20 11. HPEV and the Individual Defendants in the Peak Finance Derivative Case, on  
21 November 9, 2015, filed a motion to dismiss the amended complaint filed by PEAK on October  
22 22, 2015, which motion is pending before the United States District Court.

23 12. Since the briefing on the motion to dismiss in the Peak Finance Derivative Case  
24 was completed, the Parties therein have engaged in settlement negotiations involving both the  
25 claims raised therein and the objection filed to final approval of the DASA in this case.

26 13. PEAK, HPEV and the Individual Defendants have entered into a Settlement  
27 Agreement which, subject to obtaining the approval of the United States District Court in the  
28 Peak Finance Derivative Case, will result in the dismissal of that case and also calls for the

1 immediate withdrawal of the objection filed by PEAK in this case (“Peak Finance Settlement  
2 Agreement”).

3       **14.** A true and correct copy of the Peak Finance Settlement Agreement is attached  
4 hereto as Exhibit A.

5       **15.** In its substantive terms, the Peak Finance Settlement Agreement closely parallels  
6 the terms of the DASA. All derivative claims made in PEAK’s amended complaint in the Peak  
7 Finance Derivative Case are to be presented to the same Independent Directors Committee  
8 (“IDC”) established in the DASA. Exercising their sound business judgment, the IDC shall  
9 determine the appropriate corporate response of HPEV to the claims raised in both the SBL  
10 Derivative Action and the Peak Finance Derivative Case. The IDC shall exercise its business  
11 judgment and take any appropriate responsive action including but not limited to (a) ratification  
12 of any and all actions previously undertaken under the authority of the Management Directors;  
13 (b) filing a lawsuit against any and all Management Officers & Directors setting forth similar or  
14 identical claims as those set forth in the SBL Derivative Action and/or the Peak Finance  
15 Derivative Case; (c) settling, with or without litigation, any and all claims HPEV may have  
16 against any and all of the Individual Defendants on terms and conditions they deem in the best  
17 interest of HPEV; and/or (d) taking such other action as they determine is in the best interest of  
18 HPEV. For purposes of the withdrawal of its objection to the DASA in the SBL Derivative  
19 Action and the proposed settlement in the Peak Finance Derivative Case, PEAK acknowledges  
20 the independence and disinterestedness of the IDC members.

21       **16.** The Peak Finance Settlement Agreement supplements the terms of the DASA in  
22 providing PEAK, through its duly authorized representative(s), the opportunity to meet solely  
23 with the IDC for no more than three and one-half hours in order that PEAK be able to make a  
24 presentation solely to the IDC regarding the matters alleged in PEAK’s amended complaint in  
25 the Peak Finance Derivative Case as well as other potential derivative claims PEAK believes  
26 may exist against HPEV’s auditors and/or other third persons or entities.

27       **17.** All Parties acknowledge that HPEV is in need of capital investment and that the  
28 pending derivative actions have been detrimental in HPEV’s ability to raise such additional

1 capital and that it is in the best interests of the Company and its shareholders for the Company to  
 2 be able to access capital markets without the uncertainty created by multiple derivative actions.

3 18. No money, stock or other valuable consideration is being given or offered to  
 4 PEAK as part of the Peak Finance Settlement Agreement or as part of the withdrawal of PEAK's  
 5 objection to the DASA. Rather, in the best interests of the Company and its shareholders, PEAK  
 6 shall have:

- 7 a. the opportunity to possibly make an investment in the Company in exchange for some  
 8 form of debt or equity or other consideration, terms to be negotiated;
- 9 b. the opportunity to identify and aid in procuring new investors for the Company and to  
 10 discuss possibly entering into an exclusive or non-exclusive financial development  
 agreement, terms to be negotiated;and
- 11 c. the opportunity to possibly enter into a business development agreement with HPEV.

12 19. The Parties represent and warrant to the Court that the request for withdrawal of  
 13 PEAK's objection is not the product of fraud or overreaching by, or collusion between, the  
 14 negotiating parties. Indeed, the Parties intend on submitting the Peak Finance Settlement  
 15 Agreement to the United States District Court in the Peak Finance Derivative Case for  
 16 preliminary and final approval, assuring that the proposed settlement itself is subject to court  
 17 scrutiny. Withdrawal of the objection in the SBL Derivative Action, however, is not dependent  
 18 upon the court in the Peak Finance Derivative Case approving the proposed settlement in that  
 19 case.

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20. It is in the interest of the fair and expeditious administration of justice for this Court to permit the withdrawal of PEAK's objection to the DASA and to have the Court determine whether to give final approval to the DASA without reference to the objection.

IT IS SO STIPULATED.

DATED this 20th day of April, 2016.

DATED this 20th day of April, 2016.

GORDON SILVER

MARQUIS AURBACH COFFING

/s/ Mark S. Dzarnoski

/s/ Vincent J. Vitatoe

MARK S. DZARNOSKI

VINCENT J. VITATOE

Nevada Bar No. 3398

Nevada Bar No. 12888

500 N. Rainbow Blvd., Suite 120

10001 Park Run Drive

Las Vegas, Nevada 89107

Las Vegas, NV 89145

Attorneys for Plaintiff/Counterdefendant HPEV, Inc., and Third-Party Defendants Timothy J. Hassett, Quentin D. Ponder, Judson W. Bibb, and Theodore H. Banzhaf

Attorneys for Defendants Spirit Bear Limited

FARUQI & FARUQI, LLP

/s/ Stuart J. Guber

Stuart J. Guber

Faruqi & Faruqi, LLP

369 Lexington Avenue, 10<sup>th</sup> Floor

New York, NY 10017

Attorneys for Peak Finance

## ORDER

The Court, having reviewed the stipulation of the parties and the Exhibits attached thereto, finds as follows:

1. There is no evidence that the withdrawal of PEAK's objection to the DASA is the product of fraud or collusion between the parties;

2. It is in the interest of the fair and expeditious administration of justice for this Court to permit the withdrawal of PEAK's objection to the DASA and to have the Court determine whether to give final approval to the DASA without reference to the objection.

///

1 THEREFORE, IT IS ORDERED ADJUDGED AND DECREED AS FOLLOWS:

2 PEAK's objection to the final approval of the DASA is hereby withdrawn and the Court  
3 shall determine whether to give final approval to the DASA without reference to the objection.

4  
5 Having considered this proposed derivative action settlement and the  
6 agreement memorializing it under FRCP 23.1(c), and there being no objections, the  
7 court finds that the settlement is fundamentally fair, reasonable, and adequate to the  
8 company and its shareholders; and that it is not the product of fraud or overreaching  
9 by, or collusion among, the negotiating parties. The settling parties are directed to  
provide the court with a proposed order that includes findings of fact and  
conclusions of law by May 13, 2016.

10 IT IS FURTHER ORDERED that the continuation of the Final Fairness  
11 Hearing scheduled for 10:00 a.m. on April 22, 2016, is VACATED.

12 April 21, 2016

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14 Jennifer Dorsey  
15 United States District Judge  
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